

DHEC'S EXHIBIT 4

**THE STATE OF SOUTH CAROLINA
BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

**IN RE: TOTAL ENVIRONMENTAL SYSTEMS, INC.
FOXWOOD HILLS SUBDIVISION WASTEWATER TREATMENT FACILITY
OCONEE COUNTY**

**CONSENT ORDER
02-248-W**

Total Environmental Systems, Inc. (Respondent) owns and is responsible for the proper operation and maintenance of a wastewater treatment facility (WWTF) serving the Foxwood Hills Subdivision located in Oconee County, South Carolina.

A South Carolina Department of Health and Environmental Control (Department) review of Discharge Monitoring Reports (DMRs) submitted by the Respondent revealed violations of the Pollution Control Act, S.C. Code Ann. § § 48-1-110 et seq. (1987 and Supp. 2001), in that it violated the permitted discharge limits for chronic toxicity, ammonia- nitrogen (NH₃-N), total residual chlorine (TRC), fecal coliform bacteria (FC) and biochemical oxygen demand (BOD) as set forth in its National Pollutant Discharge Elimination System (NPDES) permit.

Following approved procedures and based upon discussions with the Respondent during a conference on August 13, 2002, both parties agree to the issuance of this Consent Order to include the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Department issued NPDES Permit SC0022357 to the Respondent authorizing the

discharge of treated wastewater into Lake Hartwell in accordance with the effluent limitations, monitoring requirements, and other conditions set forth in Parts, I, II, and III thereof.

2. On October 24, 2001, the Department issued a Notice of Violation (NOV) to the Respondent for violations of the permitted discharge limits for dissolved oxygen (DO), biochemical oxygen demand (BOD), pH, total suspended solids (TSS), ammonia-nitrogen ($\text{NH}_3\text{-N}$), total residual chlorine (TRC), fecal coliform bacteria (FC) and chronic toxicity for the March 2001 through the October 2001 monitoring periods. In a written response to this NOV, the Respondent attributed the BOD violations to high rainfalls. The $\text{NH}_3\text{-N}$ violations were attributed to excess solids in the tertiary filter. The TRC and FC violations were attributed to temporarily having no dechlorination system. The chronic toxicity failures were attributed to the presence of excess chlorine.
3. On February 12, 2002, the Department conducted a Compliance Evaluation Inspection of the WWTF. The inspection revealed deficiencies in sludge disposal and in the self-monitoring program that resulted in an overall rating of non-compliance.
1. On March 4, 2002, the Department issued a NOV to the Respondent for violations of its NPDES permit in that the WWTF did not have an operator of proper grade making daily visits to the WWTF. In a written response to this NOV, dated March 14, 2002, the Respondent stated that a certified wastewater operator is now making daily visits to the WWTF.
2. On March 6, 2002, the Department issued a NOV to the Respondent for violations of the

permitted discharge limits for BOD, TRC, FC, and chronic toxicity. In a written response to this NOV, dated March 15, 2002, the Respondent stated that it had found the WWTF to be stagnant and having a low pH. During an investigation into the cause or causes of the low pH, evidence of "some chemical intrusion" was found in one of the lift stations. The Respondent stated that it was continuing to investigate the nature of the chemical intrusion.

3. On March 6, 2002, the Department issued a Warning Letter to the Respondent for violations of the NPDES reporting requirements in that the January 2002 DMR did not include the date of preparation and was not signed.
4. On April 1, 2002, the Department issued a NOV to the Respondent for violations of the permitted discharge limits for BOD, FC and chronic toxicity for the February 2002 through March 2002 monitoring periods. A written response to the NOV was not requested since and explanation for the violations was submitted with the February 2002 DMR.
8. A review of DMRs submitted by the Respondent from September 2001 through May 2002 has revealed the following permitted discharge limit violations:

NH₃-N - September 2001 and May 2002;

TRC – November 2001; January 2002;

FC – September, November and December 2001; January and February 2002;

Chronic toxicity – September, October, and December 2001, January, February and March 2002;

BOD – October, November, and December 2001; January, February and March 2002.

9. On August 13, 2002, the Department held an enforcement conference with the Respondent

to discuss the above-cited violations. The Findings of Fact were reviewed and acknowledged by the Respondent. The Respondent stated that it had invested a considerable amount of money in the WWTF, especially in upgrading the collection system. The Respondent also stated that it was evident that the vast majority of the problems associated with the WWTF were due to a lack of proper operation and maintenance. The Respondent also stated that it would take whatever steps were necessary to bring the WWTF back into compliance. Also discussed was the issuance of a Consent Order and possible civil penalties.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the Department reaches the following Conclusions of Law:

1. The Respondent violated the Pollution Control Act, S.C. Code Ann. § 48-1-110(d) (Supp. 2000), and Water Pollution Control Permits, 24 S.C. Code Ann. Regs. 61-9.122.41(a)(1) (Supp. 2000), in that it failed to comply with the effluent limitations for chronic toxicity, NH₃-N, BOD, FC and TRC as required in Part I A.1. of the NPDES permit.
2. The Respondent violated the Pollution Control Act, S.C. Code Ann. § 48-1-110(d) (Supp. 2000), and Water Pollution Control Permits, 24, S. C. Code Ann. Regs. 61-9.122.41(a)(1) (Supp. 2000), in that it failed to properly operate and maintain the wastewater treatment facility as required in Part II C. 1. of the NPDES permit.
3. The Pollution Control Act, S.C. Code Ann. § 48-1-330 (1987) provides for a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day of violation for any person violating the Act, regulation, permit, permit condition, final determination, or Order of the

Department.

NOW, THEREFORE, IT IS ORDERED, CONSENTED TO AND AGREED, pursuant to the Pollution Control Act, S.C. Code Ann. § 48-1-50 (1987) and § 48-1-100 (Supp. 2000), that the Respondent shall:

1. Operate and maintain the WWTF in accordance with applicable State and Federal regulations.
2. Within sixty (60) days of the execution date of this Order, submit to the Department three (3) copies of a corrective action plan (CAP) detailing standard operation and maintenance procedures which will be implemented to prevent future effluent violations. The CAP shall include a diagnostic evaluation (DE) of the WWTF conducted jointly by a State registered professional engineer and an independent certified operator (not employed by the WWTF). The DE shall be used to determine if the existing WWTF, as built, can meet the NPDES permit limits as designed, and identify operational techniques and maintenance procedures which will be implemented to prevent effluent violations. The DE, signed and stamped by the engineer, shall include, but not be limited to, a review of the design criteria for the WWTF stating whether the facility can or cannot meet permit limits as designed; and an evaluation of the existing process control techniques such as, but not limited to:

- Settleometer
- Dissolved oxygen profile throughout the aeration basin
- pH profile
- MLSS
- MLVSS
- Sludge blanket depth
- Microscopic examination

Waste sludge volume

The operator shall submit a DE analysis with process control recommendations, which will be utilized in making sound operational decisions at the facility to prevent effluent violations.

3. If the DE indicates that construction of an upgrade is required to meet limits, then within ninety (90) days of the execution date of this Order, submit three (3) copies of a preliminary engineering report (PER) with a schedule of implementation. The PER shall be suitable for approval and prepared in accordance with Standards for Wastewater Facility Construction, S.C. Code Reg. 61-67 (Supp. 2000). The schedule, upon Department approval, shall be incorporated into and become an enforceable part of this Order. Completion of construction per the schedule shall also become an enforceable part of this
4. Within ninety (90) days of the execution date of this Order, submit to the Department an updated O&M manual, containing operation and maintenance instructions for all equipment and appurtenances associated with the WWTF. The manual should also contain a general description of the treatment processes, operating characteristics that will produce maximum treatment efficiency and corrective action to be taken should operating difficulties be encountered.
6. Pay to the Department a civil penalty in the amount of nineteen thousand six hundred dollars (\$19,600.00), according to the following schedule:

Amount Due

Due Date

\$4,900.00

January 1, 2003

\$4,900.00
\$4,900.00
\$4,900.00

April 1, 2003
July 1, 2003
October 1, 2003

PURSUANT TO THIS ORDER, communications regarding this Order and its requirements shall be addressed as follows:

Robert Hopkins Ridgell
Bureau of Water-Enforcement Division
S.C. Department of Health and Environmental Control
2600 Bull Street
Columbia, S.C. 29201

The Respondent shall confirm, in writing, completion of the Order requirements to the above address within five (5) days of completion.

IT IS FURTHER ORDERED AND AGREED that if any event occurs which causes or may cause a delay in meeting any of the above scheduled dates for completion of any specified activity, the Respondent shall notify the Department in writing at least one (1) week before the scheduled date, describing in detail the anticipated length of the delay, the precise cause or causes of delay, if ascertainable, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented.

The Department shall provide written notice as soon as practicable that a specified extension of time has been granted or that no extension has been granted. An extension shall be granted for any scheduled activity delayed by an event of *force majeure*, which shall mean any event arising from causes beyond the control of the Respondent that causes a delay in or prevents the performance of any of the conditions under this Consent Order including, but not limited to: a) acts of God, fire,

war, insurrection, civil disturbance, explosion; b) adverse weather condition that could not be reasonably anticipated causing unusual delay in transportation and/or field work activities, c) restraint by court order or order of public authority; d) inability to obtain, after exercise of reasonable diligence and timely submittal of all applicable applications, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority; and e) delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence by the Respondent.

Events which are not *force majeure* include by example, but are not limited to, unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or any person's failure to exercise due diligence in obtaining governmental permits or fulfilling contractual duties. Such determination will be made in the sole discretion of the Department. Any extension shall be incorporated by reference as an enforceable part of this Consent Order and thereafter be referred to as an attachment to the Consent Order.

**THE SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL**

BY: C. Earl Hunter
C. Earl Hunter,
Commissioner

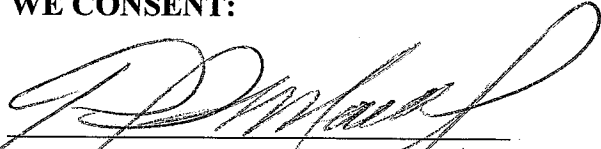
Date: 11/13/02

BY: Alton C. Boozer
Alton C. Boozer, Chief

Date: 11/12/02

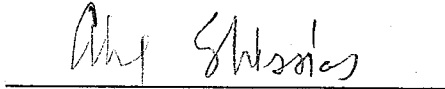
Bureau of Water

WE CONSENT:



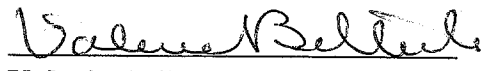
Total Environmental Systems, Inc.

Date: 11/6/02



Attorney for the Department

Date: 11/13/02



Valerie A. Betterton, Director
Water Enforcement Division

Date: 11/12/02